

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

# United States District Court

District MASSACHUSETTS

Name WALTER HOWARD, PRO SE.

Prisoner No.  
M-14559 (Civil)Case No.  
SJC: FAR:14040

Place of Confinement

NEMANSKET CORRECTIONAL CENTER (aka, TREATMENT CENTER)  
30 ADMINISTRATION RD., D2-11 BRIDGEWATER, MA. 02324.Name of Petitioner (include name under which convicted)  
WALTER HOWARD, PRO SE.19 BISHOP ST.  
LOWELL, MA. 01851Name of Respondent (authorized person having custody of petitioner)  
ROBERT MURPHY, SUPERINTENDANT  
V. NEMANSKET CORRECTIONAL CENTER  
30 ADMINISTRATION RD.  
BRIDGEWATER, MA. 02324

The Attorney General of the State of: MASSACHUSETTS,

THOMAS RIELLY, ESQ.

PETITION

04-12641-DPW

Referred to MT RB Collins

1. Name and location of court which entered the judgment of conviction under attack MIDDLESEX SUPERIOR COURT, 40 THORNDIKE ST., CAMBRIDGE, MA.

2. Date of judgment of conviction November 25th, 1992./Appeal 03-P-56./FAR:5/24/04.

3. Length of sentence 12 to 15 years w/8 years to be served, and 10 to 15 years, suspended, w/10 years probation, and treatment ordered.

4. Nature of offense involved (all counts) Indecent assault and battery on persons under 16, assault w/intent, statutory rape on person under 16. The offenses charged did not involve any physical violence or threats of violence. The offenses charged were of a consensual nature, but involved manipulation and bribery of alleged 9 boys between the ages of 14 to 16.

5. What was your plea? (Check one)

(a) Not guilty ☐(b) Guilty ☒(c) Nolo contendere ☐

After misrepresentation of plea terms by counsel, and being over medicated w/mal prescribed psychotropic medications rendering me diminished in mental capacity. If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

After counsel misrepresented the terms of a plea agreement, and the state reneged on its offer during its sentence request, numerous charges were placed on file, without my being informed of what placed on file meant, and I had no idea/pre proceedings knowledge of the from and after sentence.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

(a) Jury ☐(b) Judge only ☐

7. Did you testify at the trial?

Yes ☒No ☐

Yes, while diminished in mental capacity by mind altering drugs.

8. Did you appeal from the judgment of conviction?

Yes ☒No ☐

Not until after I learned about all the injustices concerning a sentence I could not make an autonomous decision about because of my diminished mental capacity from mal prescribed psychotropic medications.

9. If you did appeal, answer the following:

- (a) Name of court Massachusetts Appeals Court
- (b) Result 5 counts of indecent A & B on a child were reversed due to a defective plea colloquy. The court also refused to address other issues.
- (c) Date of result and citation, if known March 2004, 03-P-56
- (d) Grounds raised Involuntary and unknowing plea, no 5th amendment warning, and that the defendant didn't admit to the elements of the crimes charged, as well as the omission of the "essential elements of the crimes charged.
- (e) If you sought further review of the decision on appeal by a higher state court, please answer the following:
- (1) Name of court Massachusetts Supreme Judicial Court
- (2) Result Application for Further Appellate review denied w/o reasons stated. Counsel refused to take the case any further.
- (3) Date of result and citation, if known May 4th, 2004. Docket #: 04-14040
- (4) Grounds raised That the Appeals Court erred in its decisions and interpretations. The appeals court drew some strange connections between an offer concerning sexual relations with intent to rape a child. Because the appeals court refused to permit a stay and return to lower court, the defendant's strongest issues were ignored by the courts.
- (f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal: NONE

- (1) Name of court \_\_\_\_\_
- (2) Result \_\_\_\_\_
- (3) Date of result and citation, if known \_\_\_\_\_
- (4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court Middlesex Superior Court. j. Robert Bohn, Jr.
- (2) Nature of proceeding Motion to revise and revoke sentence, which defendant's counsel, once again, misrepresented to the defendant, and refused to include defendant's strongest arguments concerning diminished mental capacity from mal prescribed mind altering drugs during pleas.
- (3) Grounds raised UNKNOWN BY THIS DEFENDANT DUE TO LACK OF CLIENT/COUNSEL COMMUNICATIONS.

This defendant's appointed counsel gave ineffective/incompetent counsel, and dealt with defendant in what appears to be an underhanded way. Counsel knew defendant was mentally ill and disabled, and failed/refused to present the related issues to the court. Counsel's omission of explaining things properly caused defendant to accept a plea and sentence agreement involuntarily, and unknowing.

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☒

(5) Result DENIED W/O A HEARING. (Counsel told defendant that hearing was conducted, but lied.)

(6) Date of result UNKNOWN?

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒ Didn't know the law.  
(2) Second petition, etc. Yes ☒ No ☐ RULE 30(b) Motion for new trial.

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Because I was overmedicated by malprescribed psychotropic medications, my mental capacity was diminished too badly, and I had no knowledge or experience with the law. And, I hired another attorney to proceed further, who took \$1500.00 from my family, and did no work whatsoever. This attorney's name was Greta Janusz from Fall River, Ma.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting the same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- x (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- x (e) Conviction obtained by a violation of the privilege against self-incrimination.
- x (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- x (i) Denial of effective assistance of counsel.
- x (h) Denial of right of appeal.

A. Ground one: I was over prescribed, and inappropriately prescribed, psychotropic medications prior to, and during the plea colloquy and proceedings, to such a degree that my mental capacity was diminished, and I was unable to make autonomous decisions. The court was aware.

Supporting FACTS (state briefly without citing cases or law) There is an abundance of evidence to prove that I was in fact over medicated. Not only do the transcripts of the plea colloquy show that I informed the judge that I was on a great deal of psychotropic medications, but I have an abundance of medical records indicating that psychotropic medications were prescribed, inappropriately. The effects of the medications can be somewhat seen in a careful review of the transcripts, in that most of my more in depth interactions with the court, were of a nonsequiter type. Because of the effects of the medications, I was unable to dispute the false/erroneous facts when I was asked by the court. Some of the medications had sedative side effects that rendered me lethargic and unwilling to debate/resolve disputes of certain facts. I was not only unable to comprehend the seriousness of my situation, but I had no understanding for the laws. I was just released from a psych. hospital.

B. Ground two: Because of the skewed/fragmented presentation of the alleged facts, along with the above stated conditions, numerous charges I was not told about were added to the proceedings, which later, became a part of convictions and sentences I knew nothing about prior to proceedings.

Supporting FACTS (state briefly without citing cases or law) A fair reading of the transcripts, coupled with a knowledge of my diminished mental capacity during the proceedings, should reveal that I would have had difficulty understanding the charges and proceedings even had I been of a normal state of mind. The facts alleged were, in many areas, false/erroneous, which in my condition, I could not comprehend. The court's reading of a series of indictment numbers, and associated charges, confused me enough to where I was completely boggled, mentally, and was forced to rely upon eye and head signals from an appointed attorney who misled me throughout the entire proceedings. See Transcripts showing that "breaks in the proceedings were taken," which were when my then appointed counsel manipulated me to answer either "yes or no" when questioned by the court. Because "lack of consent" was omitted from the colloquy, the essential element which was substantial during any offenses I may have committed, I pled guilty to crimes for which I was not guilty. Unknown-



C.

ingly, and involuntarily, due to ineffective/incompetent counsel. Ground three: Throughout my entire prison term, I was maintained on over prescribed, and inappropriately prescribed mind altering drugs, to a degree that I was not only unable to think properly, but I was kept in a sleepy state from 1992 to 2001, after my sentence expired. Supporting FACTS (state *briefly* without citing cases or law) See Transcripts and psychiatric records from the department of correction's mental health care practitioners, and statements from the pharmaceutical company that I was taking two times the maximum recommended dosage of the particular medication known as stellazine. At no time prior to, or during my plea and sentence hearing, and entire incarceration, did I exhibit BEHAVIORS indicating a need for the particular types of medications. I had had a misdiagnosis of paranoid psyzophrenia follow me throughout my entire term of incarceration, without any credible/qualified MD Psychiatrists conducting a legitimate examination for the purposes of diagnosing me for a potential condition, legitimately. The state prosecutor was also aware of these facts and withheld them from the court.

D.

Ground four: My attorney did not present facts to the court that I was disabled with a severe mental illness; major depressive illness, which was a result of twelve years of childhood sexual abuse by grown men that was never resolved. He also omitted facts concerning the laws. Supporting FACTS (state *briefly* without citing cases or law) See transcripts of 1992 plea colloquy, and letters to my rule 30(b) appeals attorney; Edward Gaffney. See also the abundance of records showing the truth of my mental disability, which was completely withheld from the courts, by both my counsel, and the prosecutor. In an initial arraignment, the district court judge presiding had a psychiatrist examine me, and was told by the psychiatrist that I was known to the solomon mental health center as a mentally ill citizen. Because of these omissions, and many more, erroneous/false data has been relied upon by state mental health practitioners, who, inappropriately over prescribed antipsychotic medications for a very long period of time, which has now caused me a condition known as "tartive disconesia." A condition resembling parkinson's disease, and terrets syndrome.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: When I attempted to have both my original attorney, my appeals attorney, and even the rip off attorney Great Janusz, address these issues, they refused, which has caused me to remain wrongly convicted for a multitude of offenses I did not commit. In addition because the court, my counsel, nor the prosecutor, explained what placed on file meant, legally, which permitted a multitude of false charges to become a part of my record. ALSO, I NEVER RECEIVED THE ORIGINAL INDICTMENTS!

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
 Yes ☐ No ☒ My Appeal for further appellate review was recently denied by the state's supreme judicial court, without reason stated.

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing The original attorney was James L. Brick, esq. and my my rule 30(b) attorney was Edward B Gaffney esq.

(b) At arraignment and plea James Brick, esq. 44 Thorndike st. Cambridge, Ma.

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(c) At trial James L. Brick, esq. 44 Thorndike st. Cambridge, Ma.(d) At sentencing James L. Brick, esq. 44 Thorndike st. Cambridge, Ma.(e) On appeal Revise and Revoke: James L. Brick, and for the M.R.Crim.P. 30(b), Edward B. Gaffney, esq. PO Box 5092, Wayland, Ma.(f) In any post-conviction proceeding There is unfairly, a MGL.c. 123A process being il- legally applied to me currently, and, I have a civil rights complaint concerning the alleged "civil commitment" issue in this federal court, see USDC #: 02-10807-MLW. The state continues to deny me due process.(g) On appeal from any adverse ruling in a post-conviction proceeding None as of yet, other than the state's supreme judicial court refusing to docket, and give me a docket number for a state MGL.c. 248 § 1 petition for writ of habeas corpus.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and the same time?

Yes ☒No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☒No ☐(a) If so, give name and location of court which imposed sentence to be served in the future: 10 to 15 years suspended, with 10 years of probation, with sex offender treatment ordered. The state has interfered with that from and after sentence, via, 123A.(b) Give date and length of the above sentence: November 25th, 1992. 10 to 15 years, suspended, w/probation and court ordered sex offender treatment.

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☒No ☐The from and after sentence was never explained to me prior to the November 25th, 1992, plea agreement hearing.There are also a multitude of related issues the petitioner wishes to raise, but was unable to, because appointed counsels refused me. Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.see also accompanying motion (request) for equitable tolling of time limits. additionally, the

Signature of Attorney (if any)

state appeals court is peacekeeping decisions concerning unconstitutional pleas to maintain illegal convictions.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

12/25/04  
(date)hmcSpencer Howard  
Signature of Petitioner